

Remarks

Removal of the Sheehan Reference Under § 103(c)

The applicant respectfully traverses the rejection of claims 1, 3-5, 8, 15-23, 25, and 27-29. The examiner has rejected these claims under 35 U.S.C. § 103 as obvious under Sheehan (U.S. Patent No. 6,386,314), when combined with other patents, namely Claes (U.S. Patent No. 5,440,082), Lindgren (U.S. Patent No. 6,151,717), and Augustine (U.S. Patent No. 6,427,686).

However, Sheehan is not § 103 prior art, because at the time of invention, Natus owned both the Sheehan patent and the present invention. *See* Statement of Common Ownership. This means that Sheehan cannot support an obviousness rejection, so long as it “qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102.” 35 U.S.C. § 103(c).

In the first office action, the examiner stated that Sheehan was a § 102(b) reference, but this classification is erroneous. *See* 10/4/02 office action at 1. To qualify as a § 102(b) reference, Sheehan must have been “patented or described in a printed publication” no later than August 27, 2000, since the present application was filed on August 27, 2001.

But Sheehan was never subject to pre-grant publication (it is a “B1” reference), and it was only patented on May 14, 2002, *after* the present application was filed. So Sheehan is only a § 102(e) reference, and therefore must be removed as prior art under § 103(c).

Therefore, all claims should be allowed, since the examiner's rejection is based on Sheehan, but Sheehan is not a proper § 103 reference.

Amendments

In response to the typographical error noticed by the examiner in claim 1, the applicant has made an appropriate correction.

The applicant has added four new claims: 30, 31, 32, and 33. These claims are directed to the interaction between the ATA and the ear coupler itself. (*Compare* claims 10 - 12, which the examiner has indicated are allowable if re-written to avoidance dependence on rejected claims). The applicant has submitted the required additional fee for these new claims.

These new claims do not add new matter. The relationship between the ATA and the ear coupler was described in the application as originally filed. *See* page 8, Figs. 4 -12.

The applicant has made minor changes to page 8 of the specification so that the terminology of the specification conforms to these new claims, as allowed under MPEP § 608.01(o). The sentence that has been added to page 8 merely states what is already described pictorially in Figs. 4 - 12, namely that the ATA has an arm extending laterally away from the port when the ATA is attached to the coupler. Likewise, Figures 4 -11 have been amended to include the reference number 72 to more particularly identify the

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arm of the ATA.

Conclusion

Sheehan was the critical reference that supported the examiner's obviousness rejection. Since it has been removed as a reference by the accompanying Statement of Common Ownership, all claims of the present application are now ready for allowance.

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Annotated Marked-up Drawings

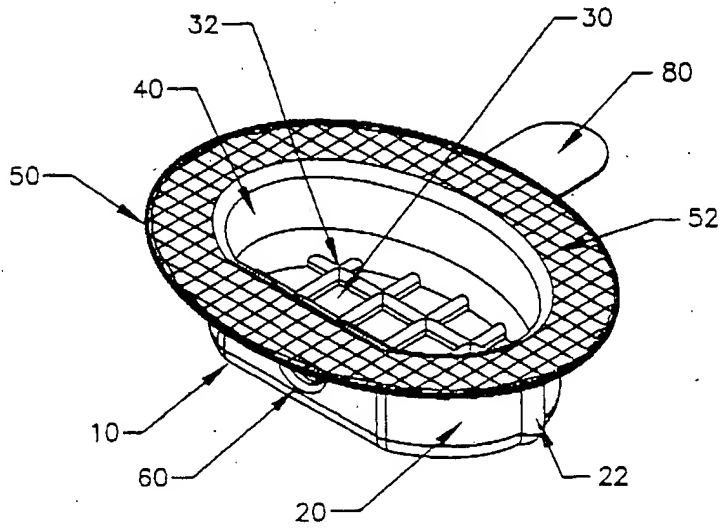


Figure 1

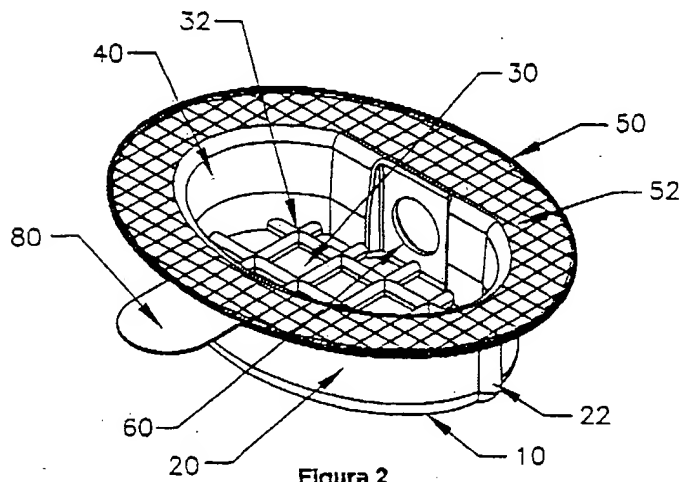


Figure 2

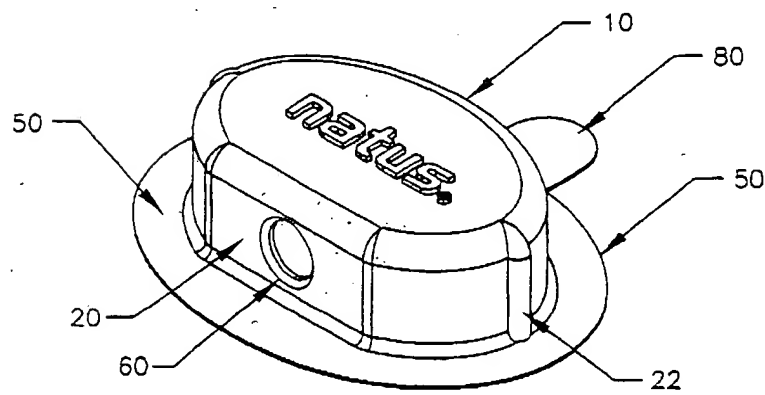
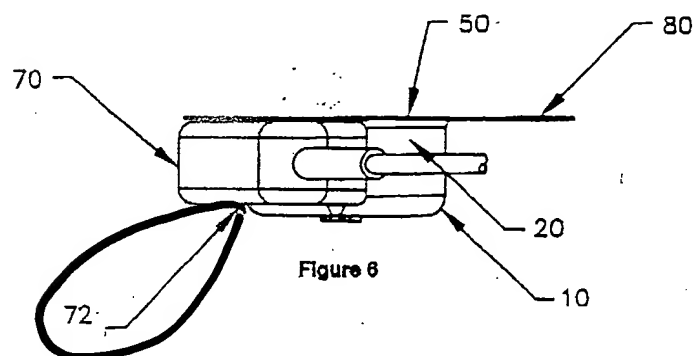
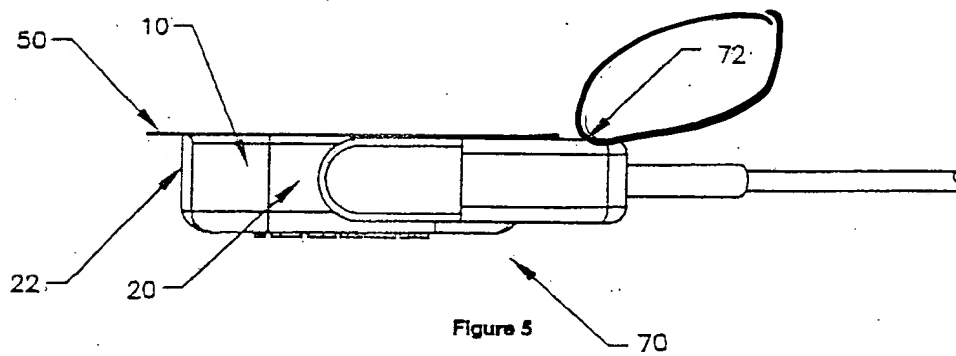
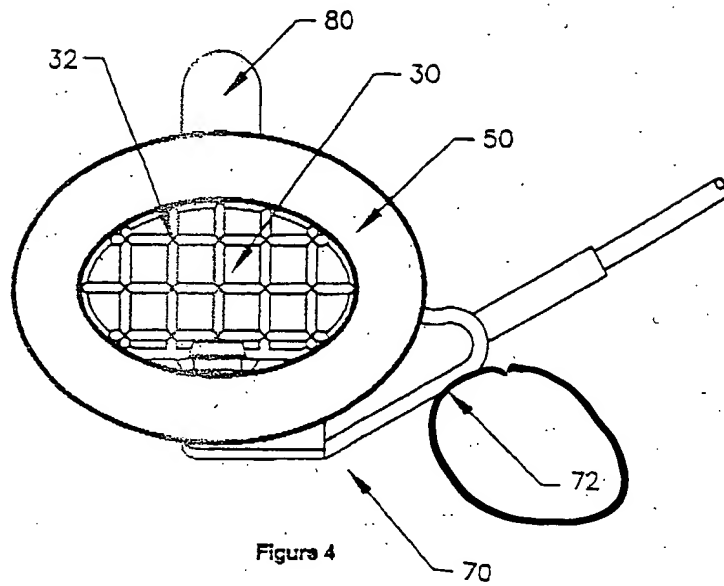


Figure 3



Annotated Marked-up Drawings



Annotated Marked-up Drawings

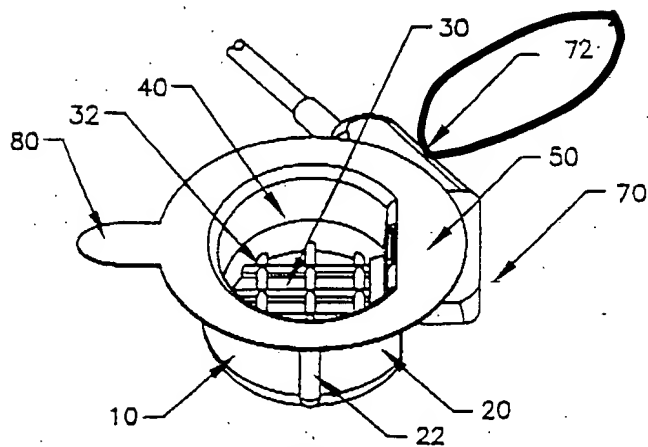


Figure 7

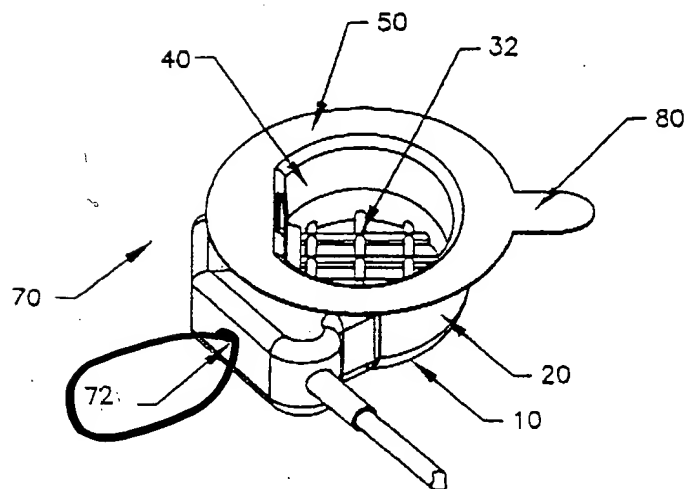


Figure 8

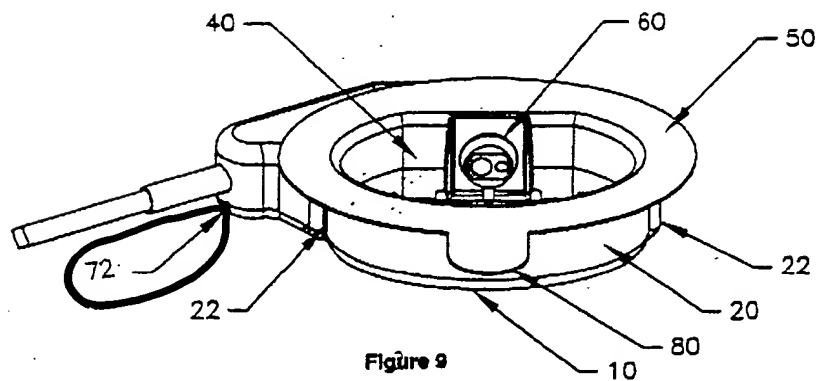
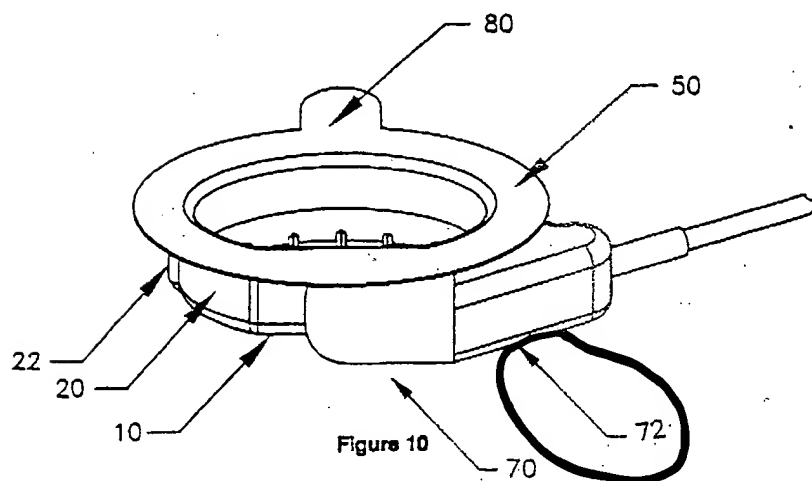
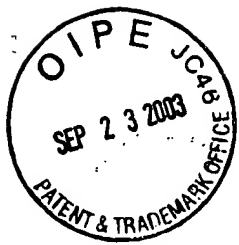


Figure 9



Annotated Marked-up Drawings





Annotated Marked-up Drawings

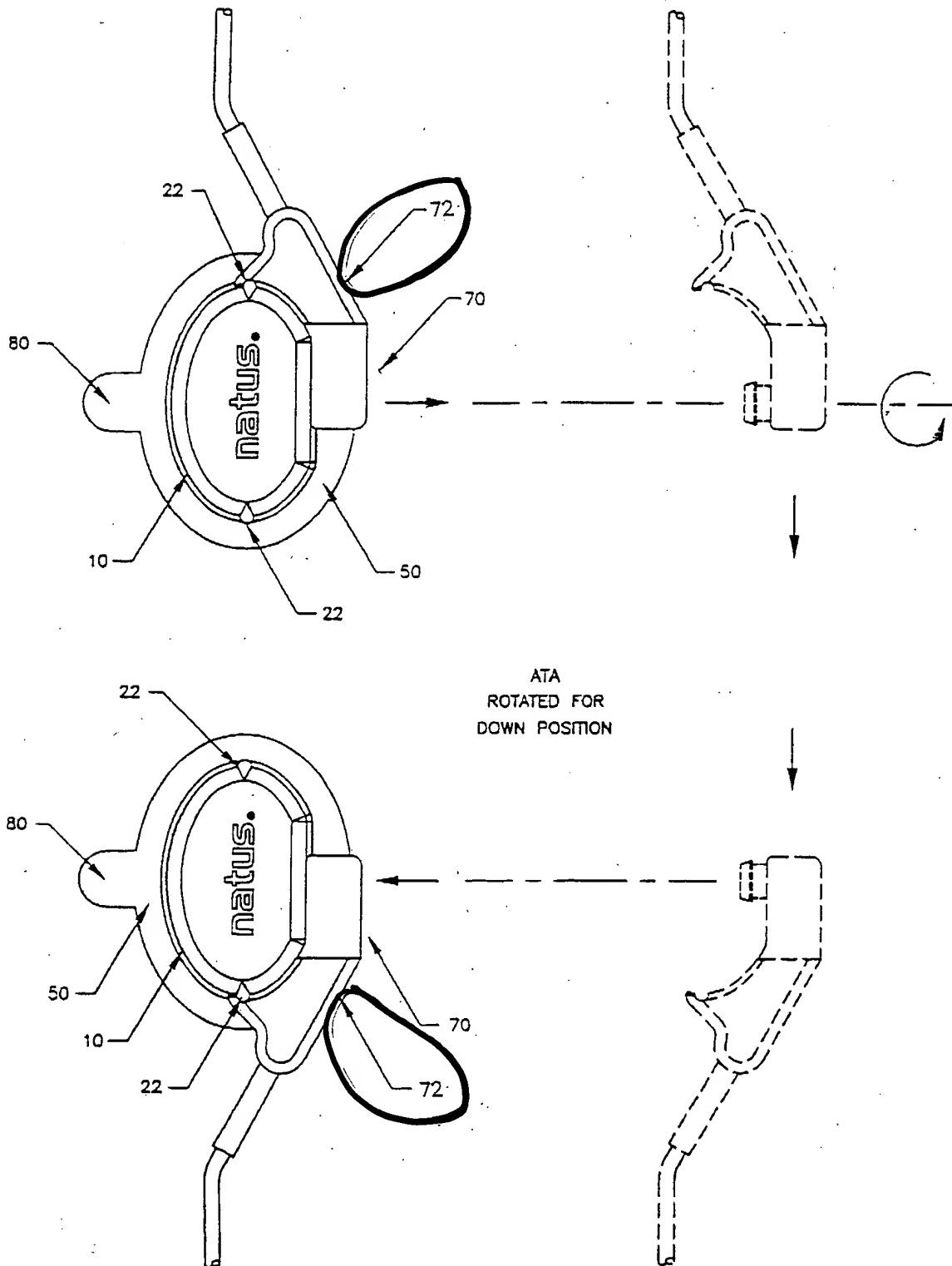


Figure 11